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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ex rel,)
W.A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA,)
et al.)

Plaintiffs,)

vs.)

CASE NO. 05-CV-329-GKF-PJC

TYSON FOODS, INC., et al.,)

Defendants.)

TRANSCRIPT OF PROCEEDINGS
JULY 28, 2009
BEFORE THE HONORABLE GREGORY K. FRIZZELL, DISTRICT JUDGE
MOTION HEARING, VOLUME I

APPEARANCES:

For the Plaintiffs:

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EXHIBIT

tabbies

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1 In Dr. Harwood's Rule 26 report, she talked about
2 some other syndromes. She talks about Guillain-Barre
3 Syndrome. She talks about acute febrile respiratory illness.
4 I think I'm getting the name right, I can't swear to it. She
5 talked about something called Reiter's Syndrome. But these are
6 all just mentioned generally in her report as things that might
7 be associated with campylobacter. But there's now -- again,
8 she admits she has no evidence of any of these occurring in the
9 IRW, and certainly not occurring as a result of exposure to
10 poultry litter.

11 She -- her conclusion is also based in part on the --
12 you remember the whole issue, Your Honor, over the water
13 quality standards that were promulgated by EPA in 1986 that
14 were based entirely on human-impacted waters. And we've put in
15 some evidence that EPA is now reconsidering those in light of
16 the fact that they don't necessarily bear the same health risk
17 conclusions when you're dealing with water that's only impacted
18 by animal sources.

19 Dr. Harwood relies on those, but those assume full
20 body emersion, which is head under water, completely in the
21 river. But at her deposition, she acknowledged she has got no
22 idea how often recreators in the IRW are fully emersed in the
23 water. She also testifies she doesn't know --

24 THE COURT: Frankly, I don't know that you want to
25 raise that. I mean, clearly people's heads go under the water

1 when they're canoeing, when they're recreating in the IRW. Do
2 you really want to go there? That really doesn't pass the
3 smell test.

4 MR. TODD: Your Honor, I'm not saying it doesn't
5 happen, but I'm saying that simply numerically applying the
6 EPA's 17 per thousand estimation to the number of recreators in
7 the IRW, the number given by Dr. Caneday in factoring out how
8 many sick people there must be out there, even though they
9 can't be found -- and that's what Dr. Harwood would love to
10 do. But that's not an analysis that she has the basis to do,
11 to provide.

12 THE COURT: Well --

13 MR. TODD: At any rate --

14 THE COURT: I'm not persuaded.

15 MR. TODD: Then that's on me, Your Honor.

16 THE COURT: I doubt if you or Mr. George would send
17 your children down to the IRW if we knew that there was fecal
18 indicator bacteria there and just tell them just don't stick
19 your head under the water. You know, that just doesn't pass
20 the test. I'm sorry. Go ahead.

21 MR. TODD: Your Honor, my basic point is a simple
22 one, and that is that without the biomarker, Dr. Harwood
23 doesn't have any other basis to make an allegation of health-
24 related effects resulting from poultry litter. The biomarker
25 is essential to that. So we would resist the uncoupling that